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**REMARKS**

Claims 1 and 33-57 are currently pending in the subject application and are presently under consideration. Claims 1 and 33-57 have been cancelled herein, and new claims 58-77 have been added. A marked-up version of all pending claims is found at pages 2-6 of this Reply. The newly added claims do not introduce any new subject matter, and, accordingly, no new search is required.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**I. Claim Objections**

Claim 45 is objected to for certain informalities. Claim 45 has been cancelled herein. Newly added claim 70 has been drafted to correct such informalities in accordance with the Examiner's suggestions. Specifically, claim 70 recites an assembly wherein "the closure is formed of plastics." Therefore, withdrawal of this rejection is respectfully requested.

**II. Rejection of claims 1 and 37 Under 35 U.S.C. §112, Second Paragraph**

Claims 1 and 37 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 37 has been cancelled herein. Newly added claim 62 has been drafted to clarify the subject matter which applicant regards as his invention and is believed to be in complete compliance with 35 U.S.C. §112, second paragraph.

In view of at least the above, it is respectfully requested that this rejection be withdrawn.

**III. Rejection of Claims 1, 33, 36, 39-49, 52, 53, and 55 Under 35 U.S.C. §102(b)**

Claims 1, 33, 36, 39-49, 52, 53, and 55 stand rejected under 35 U.S.C. §102(b) as being anticipated by Grussen (US RE27,648). Withdrawal of this rejection is respectfully

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request for at least the following reasons. Claims 1, 33, 36, 39-49, 52, 53, and 55 have been cancelled herein. New independent claim 73 comprises, in part, aspects previously set forth in independent claim 52. Grussen does not describe each and every element of applicant's invention as set forth in the newly added claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The present invention relates generally to container closures, and in particular to container closures for pressurized products, such as pressurized beverages. New independent claim 73 recites "...the bracing band is integral with the closure and is joined thereto by a plurality of spaced apart frangible connections, and in that the bracing band is mounted radially outside said wall or wall segment carrying the engagement formation; *the side wall or wall segment is configured to be stressed outwardly from an unstressed condition to a stressed condition when the closure is in its fitted condition on the container mouth; cooperating abutment surfaces are provided on the band and on the side wall or wall segment and configured such that: (i) in the unstressed condition of the side wall or wall segment, the abutment surfaces are non-interlocking and do not restrict movement of the band relative to the side wall or wall segment, and (ii) in the stressed condition of the side wall or wall segment after fitting of the closure on the container mouth, the abutment surfaces produce a mechanical interlock between the band and the side wall or wall segment in a circumferential direction, to restrict movement of the band relative to the side wall or wall segment in the circumferential direction.*" Such aspects of independent claim 73 are supported by the specification at, for example, page 19, lines 3-28, and Figures 18 and 22. As illustrated in Figure 18, a gap can exist between the closure and the bracing band in the unstressed condition. The gap can facilitate molding and enable more substantial (e.g., thicker) mold parts to be

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utilized, which in turn results in reduced vulnerability to damage. Thus, the mechanical interlock of the claimed invention restricts movement of the bracing band in a circumferential direction. Furthermore, the engagement device is stressed outwardly, and does not produce a mechanical interlock in the unstressed position. Rather, a mechanical interlock is only generated in the stressed condition of the engagement device. Grussen does not describe such aspects of the applicant's invention.

Grussen merely teaches a ring with a single and continuous inner edge that interfaces with a mouth of a bottle. "This ring has a scalloped edge delimiting alternating portions 12 having a maximum radial thickness and 12a having a minimum radial thickness." (Column 4, lines 1-3.) Grussen requires a sealing skirt 4 that interfaces with the inside of the mouth of the bottle in order to form an adequate seal. Thus, Grussen describes a cap for sealing a bottle that has a continuous interface along the interior and the exterior of the bottle mouth in order to effectuate a seal around the bottle mouth. Furthermore, the interface that is fitted over the exterior surface of the bottle mouth is *only temporarily stressed*, such that, once it is fit over the bottle mouth it returns to an unstressed state. It is precisely this feature of Grussen that necessitates the addition of a second interface that engages the interior of the bottle mouth. Conversely, applicant's invention *maintains an outwardly radial stressed condition* on the engagement device so that a constant state of static tension is present once the engagement device is fitted to the bottle mouth, while mitigating the need for an additional interface for the interior of the bottle mouth.

In view of at least the above, it is readily apparent that Grussen fails to anticipate or make obvious the present invention as set forth in newly added claim 73 (and claims 74-77, which depend there from). Therefore, this rejection should be withdrawn.

#### IV. Rejection of Claims 50, 52, and 56 Under 35 U.S.C. § 102(b)

Claims 50, 52, and 56 stand rejected under 35 U.S.C. §102(b) as being anticipated by Jamer (US 4,394,920). Withdrawal of this rejection is respectfully request for at least the following reasons. Claims 50, 52 and 56 have been cancelled herein. Newly added claims 72 and 73 comprise aspects previously set forth in cancelled claims 50 and 52.

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Jamer does not describe each and every element of applicant's claimed invention as set forth the in the subject claims.

As discussed above in Section III, independent claim 73 sets forth an engagement device that permits a *mechanical interlock only upon stressing of the engagement device* in the fitted position of the closure on the mouth of a container. Specifically, independent claim 73 recites, "...(i) *in the unstressed condition* of the side wall or wall segment, the *abutment surfaces are non-interlocking and do not restrict movement of the band* relative to the side wall or wall segment, and (ii) *in the stressed condition* of the side wall or wall segment *after fitting of the closure on the container mouth, the abutment surfaces produce a mechanical interlock between the band and the side wall or wall segment in a circumferential direction, to restrict movement of the band relative to the side wall or wall segment in the circumferential direction.*" Independent claim 72 recites similar aspects to those set forth in independent claim 73. Jamer does not disclose such aspects of the present invention.

Jamer merely describes a system wherein a mechanical interlock is present at all times, such that it exists regardless of whether the closure is in a fitted position or in its naturally molded condition. This aspect of Jamer requires that extremely fragile mold parts to permit narrow saw-tooth slits between the inner periphery of the band 62 and the outer surface of the closure, as can be seen in Figure 4 of Jamer. Furthermore, the band 62 is molded integrally with the closure. The fragile parts required by Jamer increase production costs, are vulnerable to damage, and require frequent replacement.

Conversely and as previously stated, the present invention provides for a more robust and durable engagement device while mitigating vulnerability to damage and reducing production costs. This is accomplished by providing a mechanical interlock in a circumferential direction *only upon stressing of the side wall*, which is maintained *only while the closure is in the fitted position on the mouth of the container*, and which is not present when the engagement device is in an unstressed state.

In view of at least the above, it is respectfully submitted that Jamer does not anticipate or make obvious applicant's invention as set forth in independent claims 72 and 73 (and claims 74-77, which depend respectively there from). Accordingly, this rejection

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should be withdrawn.

V. Rejection of Claims 34, 35, 37, 38, 51, and 54 Under 35 U.S.C. § 103(a)

Claims 34, 35, 37, 38, 51, and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Grussen (US RE27,648). Withdrawal of this rejection is respectfully requested for at least the following reasons. Claims 34, 35, 37, 38, 51, and 54 have been cancelled herein. Newly added claim 58 comprises certain aspects previously presented in claim 51. Grussen does not teach or suggest every element of the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) *must teach or suggest all the claim limitations*. See MPEP §706.02(j). The *teaching or suggestion to make the claimed combination* and the reasonable expectation of success *must both be found in the prior art and not based on applicant's disclosure*. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

Independent claim 58 recites, "...a band for bracing the engagement device to lock it in an engaged condition by resisting outward movement of the engagement device when the band is in a bracing position; characterized in that: the band is movable intact and relative to the engagement device out of the bracing position, and in that the mouth has a larger configuration than the engagement device of the closure in an unstressed condition of the engagement device, *such that when the closure is in its operative position on the container mouth after fitting, the engagement device is stressed outwardly and the band is maintained in a state of static tension*, said tension increasing the bracing effect of the band on the engagement device." The engagement device of the closure is not stressed temporarily during fitting, but rather remains stressed when the closure is in its operative position after fitting as well. The residual stressing of the

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engagement device maintains the band in a state of static tension, which in turn increases the bracing effect of the band in the post-fitted condition of the closure. Grussen does not teach or suggest such aspects of applicant's invention.

Grussen only describes a closure device wherein the engagement apparatus is stressed temporarily upon fitting over the undercut rim of a container mouth. Once the engagement apparatus has passed over the rim, it returns to its normal, unstressed state as it fits into the undercut below the rim of the container mouth. Grussen fails to teach or suggest a residual stress that is maintained on the bracing band. As shown in Figure 10 of Grussen, there is a gap between the bracing band (1) and the sidewall of the closure (3), such that the closure does not engage the band in a manner that provides a maintained static tension on the band to restrict movement in a circumferential manner. Thus, Grussen does not generate or maintain static tension in the post-fitted condition of the closure.

In view of the foregoing comments, it is respectfully submitted that Grussen does not make obvious applicant's invention as set forth in independent claim 58, and claims 59-71, which depend there from. Therefore, this rejection should be withdrawn.

#### VI. Rejection of Claim 57 Under 35 U.S.C. § 103(a)

Claim 57 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Grussen in view of Ohmi *et al.* (US 5,762,217). This rejection should be withdrawn for at least the following reasons. Claim 57 has been cancelled herein. Newly added claim 77 comprises elements previously presented in cancelled claim 57. However, claim 77 depends from claim 73, which, in view of the above, is not made obvious by Grussen. Ohmi *et al.* fails to overcome the deficiencies of Grussen with respect to independent claim 73.

Therefore, withdrawal of this rejection is respectfully requested.

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**CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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